

REMARKS

Summary

Claims 1-39 stand in this application. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested.

35 U.S.C. § 103

At page 2, paragraph 3 of the Office Action claims 1, 3, 4, 6, 7, 9-11, 13, 14, 16, 18-31 and 38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over US 6,631,141 to Kumar et al. ("Kumar") in view of US 6,594,279 to Nguyen et al. ("Nguyen"). At page 12, paragraph 4 of the Office Action claims 2, 5, 8, 12, 15, 17 and 39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kumar in view of Nguyen and further in view of US 2004/0068686 to Palm ("Palm"). At page 16, paragraph 5 of the Office Action claims 32-37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kumar in view of Palm and Nguyen. Applicant respectfully traverses the rejections, and requests reconsideration and withdrawal of the obviousness rejections.

The Office Action has failed to meet its burden of establishing a *prima facie* case of obviousness. According to MPEP § 2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the reference (or

references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

As recited above, to form a *prima facie* case of obviousness under 35 U.S.C § 103(a) the cited references, when combined, must teach or suggest every element of the claim. See MPEP § 2143.03, for example. Applicant respectfully submits that the Office Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in claims 1-39. Therefore claims 1-39 define over the cited references whether taken alone or in combination. For example, claim 1 recites the following language, in relevant part:

comparing a value of the remote discovery register to the aggregation discovery code.

As correctly noted in the Office Action, the above-recited language is not disclosed by Kumar. According to the Office Action, the missing language is disclosed by the Nguyen at column 10, lines 25-32 and 42-45. Applicant respectfully disagrees.

Applicant respectfully submits that claim 1 defines over Nguyen. For example, Nguyen at the given cite, in relevant part, states:

The source address, extracted from the message sent by the BWC 14, is used as the host ID index to search the Channel.sub.database. 2. If there is a record in the Channel.sub.database that corresponds to the host ID and the Destination ID respectively extracted from the source address and the destination address of the BWC request, the BWM 12 performs the following actions ... if the received message is a bandwidth de-allocation message: i. the BWM updates the Channel.sub.database accordingly....

By way of contrast, the claimed subject matter teaches “comparing a value of the remote discovery register to the aggregation discovery code....” Applicant respectfully submits that this is different than the above recited teaching of Nguyen.

Applicant respectfully submits that Nguyen at column 10, lines 1-5 describes the Host ID as:

[A] unique data link layer address...which is used as the key attribute for records in the database. The Host ID also represents one end of a channel, the sender.

Applicant respectfully submits that he has been unable to locate, in the cited portions of Nguyen, any teaching directed to “comparing a value of the remote discovery register to the aggregation discovery code....” Applicant respectfully submits that matching a source address and a destination address, as arguably taught by Nguyen, is different than the above recited language of claim 1.

Furthermore, according to the Office Action on page 18, “Kumar teaches that “the aggregation discovery code is the System ID extracted from the LACP message” and that the Host ID of Nguyen represents the same signal as the System ID disclosed in Kumar. Applicant respectfully disagrees. Applicant respectfully submits that the Office Action improperly correlates the System ID of Kumar with the Host ID of Nguyen. Applicant respectfully submits that he has been unable to locate any teaching in Nguyen directed to the Host ID representing an aggregation discovery code as recited in claim 1 and as alleged in the Office Action. Therefore, Applicant respectfully submits that Kumar and Nguyen, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claim 1.

Moreover, Applicant respectfully submits that Palm also fails to teach, suggest or disclose the above recited missing language. Therefore, Applicant respectfully submits that the cited references, taken alone or in combination, fail to teach, suggest or disclose each and every element recited in independent claim 1. Furthermore, Applicant respectfully submits that independent claims 4, 6, 10, 13, 16, 18, 29, 32 and 38 recite features similar to those recited in claim 1. Therefore, Applicant respectfully submits that claims 4, 6, 10, 13, 16, 18, 29, 32 and 38 are not obvious and are patentable over the cited references for reasons analogous to those presented with respect to claim 1.

Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example. Accordingly, removal of the obviousness rejection with respect to claims 1, 4, 6, 10, 13, 16, 18, 29, 32 and 38 is respectfully requested. Claims 2, 5, 7-8, 12, 14-15, 17, 20, 26, 28, 31, 33-37 and 39 also are non-obvious and patentable over the cited references, taken alone or in combination, at least on the basis of their dependency from claims 1, 4, 6, 10, 13, 16, 18, 29, 32 and 38 respectively. Applicant, therefore, respectfully requests the removal of the obviousness rejection with respect to these dependent claims.

For at least the above reasons, Applicant submits that claims 1-39 recite novel features not shown by the cited references. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above.

Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

It is believed that claims 1-39 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is invited to contact the undersigned at 724-933-9338 to discuss any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to deposit account 50-4238.

Respectfully submitted,

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Robert V. Racunas, Reg. No. 43,027
Under 37 CFR 1.34(a)

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